

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MONTGOMERY CARL AKERS,

Plaintiff,

v.

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CIVIL ACTION NO. 1:12CV29  
(Judge Keeley)

LESLIE S. SMITH, A. CRUIT,  
and KATHERINE SIEREVELD,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On February 13, 2012, the pro se plaintiff, inmate Montgomery Carl Akers ("Akers"), filed a complaint pursuant to 42 U.S.C. § 1983 (dkt. no. 1) and a motion for leave to proceed in forma pauperis (dkt. no. 2). The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with LR PL P 2.

On February 17, 2012, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R") recommending that Akers' motion to proceed in forma pauperis be denied and his complaint be dismissed without prejudice. (Dkt. No. 7). Pursuant to 28 U.S.C. § 1915(g), Magistrate Judge Kaull determined that Akers is not entitled to proceed without prepayment of fees or costs because he has filed at least three civil actions that are frivolous, malicious, or failed to state a claim upon which relief can be granted.

The R&R also specifically warned that failure to object to the

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

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recommendation would result in the waiver of any appellate rights on this issue. The parties did not file any objections.<sup>1</sup>

Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety. Accordingly, the Court **DENIES** the motion for leave to proceed in forma pauperis (dkt. no. 2) and **ORDERS** the case **DISMISSED WITHOUT PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: April 9, 2012.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).